

**REMARKS**

The pending Office Action addresses claims 1-19, 21-24, 27-40, and 65-74 with claims 5, 11, and 27-33 being withdrawn from consideration by the Examiner. Claims 24, 69, and 72 are objected to, and claims 1-4, 6-10, 12-23, 34-40, 65-68, 70, 71, 73, and 74 stand rejected. Reconsideration and allowance are respectfully requested in view of the amendments and remarks submitted herewith.

***Amendments to the Claims***

Applicants amend claims 1, 35, 65, 73, and 74 to include the limitations of claim 34, which is now cancelled. Applicants amend claims 3, 4, and 29 to correct minor typographical errors and provide the proper antecedent basis. No new matter is added.

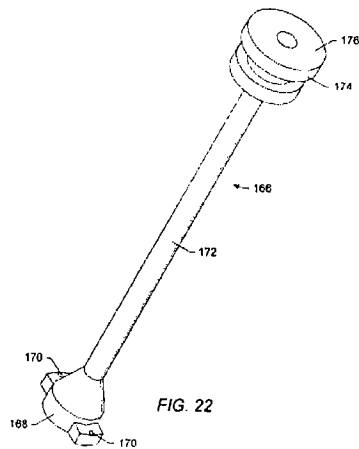
***Rejections Pursuant to 35 U.S.C. §112***

The Examiner rejects claim 3 pursuant to 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. In particular, the Examiner argues that there is insufficient antecedent bases for the limitation “the spinal fixation plate.” As noted above, Applicants amend this claim to provide the proper antecedent basis, thereby obviating the Examiner’s rejection. The Examiner is thanked for noting the inconsistencies in the claims.

***Rejections Pursuant to 35 U.S.C. §102***

***U.S. Patent No. 6,447,512 of Landry***

The Examiner rejects claims 1-4, 6-10, 12-19, 21-23, 34-40, 65-68, 70, 71, and 74 pursuant to 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,447,512 of Landry et al. Applicants disagree with the Examiner’s rejection.

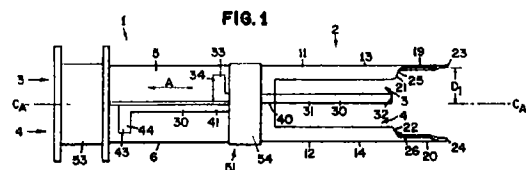


Independent claims 1, 35, 65, and 74 recite a guide device for use with a spinal fixation element that includes an elongate shaft having a proximal end that is positioned at an angle with respect to a distal end of the shaft. Landry does not teach or even suggest an elongate shaft having a proximal end that is positioned at an angle with respect to a distal end of the shaft. Rather, Landry teaches a device for inserting instruments and/or spinal implants into a disk space that includes an insertion tool that is used to insert a holder into a disk space. As shown in FIG. 22 of Landry, which is reproduced herein, the shaft 172 of the insertion tool 166 is straight. As a result, the proximal end of the shaft is linearly aligned with the respect to the distal end of the shaft. Such a configuration allows a user to strike the upper surface 176 of the insertion tool 166 with a mallet to facilitate insertion of the holder (not shown) into the disk space. (See, Column 9, lines 52-57 of Landry.) Accordingly, Landry does not teach or even suggest an elongate shaft having a proximal end that is positioned at an angle with respect to the distal end, as required by independent claims 1, 35, 65, and 74. Independent claims 1, 35, 65, 74, as well as claims 2-4, 6-10, 12-19, 21-23, 34, 36-40, 66-68, 70, and 71 which depend therefrom, therefore distinguish over Landry and represent allowable subject matter.

U.S. Patent No. 6,113,602 of Sand

The Examiner rejects claim 73 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,113,602 of Sand. Applicants disagree with the Examiner's rejection.

As noted above, independent claim 73 recites a guide device for use with a spinal fixation element that includes an elongate shaft having a proximal end that is positioned at an angle with respect to a distal end of the shaft. Sand, like Landry, does not teach or even suggest an elongate shaft having such a configuration. Rather, as shown in FIG. 1 of Sand which is reproduced herein, Sand teaches an instrument guide having proximal and distal regions 1, 2 that are



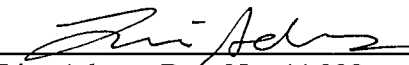
linearly aligned with one another. Accordingly, independent claim 73 distinguishes over Sand and represents allowable subject matter.

***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants is such communication is deemed to expedite the prosecution of this application.

Respectfully submitted,

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